IN THE HIGH COURT OF HIMACHAL PRADESH AT SHIMLA.

RFA No.17 of 1998
WITH
Cross Objection No.144/98.

Reserved on: 24.05.2007

Date of Decision:July 05, 2007

National Hydro Electric Power Corp. ...Appellant

Vs.

Smt.Sumundari & Others … Respondents.

Coram

The Hon'ble Mr. Justice Kuldip Singh,Judge

Whether approved for reporting?[1] Yes

For the appellant : Mr.Rajnish Maniktala, vice Mr.K.D. Shreedhar, Advocate .

For the respondents : Mr.Anand Sharma, Advocate for respondents No.1 to 6.

Mr.M.L.Chauhan, Addl. Advocate General, for respondents No.7 & 8.

Kuldip Singh, Judge.

National Hydro Electric Power Corporation (for short 'Corporation') is in appeal against award dated 8.9.1997 passed by learned District Judge, Chamba in LAC No.41 of 1993 awarding Rs.2,28,431/- more compensation for acquired land and structures along with solatium at the rate of 30% on the enhanced compensation, additional amount under Section 23 (1-A) at the rate of 12% per annum

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[1] *Whether reporters of Local Papers are allowed to see the Judgment*?

from 13.6.1992 to 25.6.1993, 9% per annum interest from 25.6.1993 to 25.6.1994 and thereafter at the rate of 15% per annum till the amount of compensation is paid or deposited. The parties are referred in the same manner as in the trial Court.

2. The facts, as emerge, are that State of Himachal Pradesh for construction of Chamera Dam reservoir acquired land in *Mohal Palehi.* The notification under Section 4 of the Land Acquisition Act, 1894 (for short 'the Act') was published on 13.6.1992 and the Collector, after conclusion of the acquisition proceedings, announced the award on 25.6.1993. The land measuring 14 Bighas 7 Biswas with structures of Smt.Sumundari Devi etc. was acquired. The Collector awarded Rs.2,69,283/- compensation for the land and Rs.1,54,295/- compensation for the structures built on the land. The Land Acquisition Collector has awarded compensation for land measuring 14 Bighas 7 Biswas at different rates per Bigha keeping in view the quality of the land as follows:-

(i)	*12-13 Bighas*	*Barani Awbal*	*Rs.20,000/-*
(ii)	*0-14 Biswas*	*Barani Doem*	*Rs.17,000/-*
(iii)	*0-3 Biswas*	*Banjir Quadim*	*Rs.11,000/-*
(iv)	*0-17 Biswas*	*Gair Mumkin*	*Rs.800/-*

3. The petitioners were not satisfied with the compensation awarded by the Collector for the land and the structures, therefore, they filed an application under Section 18 of the Act to the Collector for referring their case to District Judge for enhancement of compensation. In the application, it has been alleged that Collector has not awarded

adequate compensation to the petitioners for the land, structures, fruit and non fruit trees.

4. The respondents contested the claim of the petitioners and submitted that market value of the acquired land and structures has been determined correctly and the petitioners are not entitled to any enhancement of compensation. The Corporation has submitted that Collector has awarded compensation to the petitioners on the higher side and, therefore, the petitioners are not entitled to any enhancement of compensation, an additional objection of limitation has also been taken by the Corporation. The learned District Judge vide impugned award enhanced the compensation as noticed above. The Corporation has filed the appeal against the impugned award and petitioners have filed cross objections in the appeal for enhancement of compensation.

5. I have heard the learned counsel for the parties and have also gone through the record.

6. The learned counsel for the Corporation / appellant has submitted that the learned District Judge has erred in enhancing the compensation for the land and super structures. The market value of the acquired property has not been assessed properly. The market value of land and super structures could not be assessed separately. Sale deed dated 4.2.1988 has been wrongly relied, whereas sale deed dated 20.8.1993 has been wrongly ignored for enhancement of the compensation. The learned counsel for the petitioners / claimants has submitted that for assessing the market value of the acquired land deduction of 65% has been wrongly made by the learned District Judge from the market value of the acquired land assessed on the basis of sale

deed dated 4.2.1988. The compensation should have been awarded at uniform rate of whole of the acquired land. The compensation for structures has been allowed on the lower side. The compensation for the crops which were submerged in the water and trees, non fruit tress has not been allowed by the learned District Judge. The petitioners have been paid nothing for their rehabilitation. In rejoinder, the counsel for the appellant / Corporation has submitted that except for land and structures the petitioners / claimants did not press their claim before learned District Judge, therefore, their claim other than for land and structures shall be deemed to have been given up and now they cannot raise such claim before this Court. There is no averment in the cross objections that in fact claim of fruit trees, non fruit trees, damage to crops, rehabilitation etc. was pressed before District Judge but despite that such claim was not considered. In any case, trees will go with the land and these cannot be assessed separately. There is no evidence of alleged loss of submerged crops and alleged rehabilitation.

7. The learned counsel for the Corporation has submitted that the learned District Judge has erred in relying sale deed dated 4.2.1988 Ext.P-1 for assessing the market value of the acquired land. He has submitted that vide Ext.P-1 only 2 Biswas land was sold for a consideration of Rs.9000/- and this sale deed cannot be relied for assessing the market value of big chunk of land measuring 14-7 Bighas acquired for the Corporation. He has submitted that the learned District Judge should have taken into consideration sale deed dated 20.8.1993 for assessing the market value of the acquired land. The land and super

structures have been separately assessed which is not proper method of assessing the market value of the land having super structures.

8. The sale deed dated 4.2.1988 Ext.P-1 is of Mauza Palehi and the land acquired is also situated in Mauza Palehi. The vendor and vendee of sale deed dated 4.2.1988 have been examined. The notification under Section 4 of the Act was published on 13.6.1992, thus, the transaction of sale deed Ext.P-1 took place about 4 years and 4 months prior to notification under Section 4 of the Act. It cannot be presumed that in order to enhance the market value of the acquired land, the sale deed Ext.P-1 was executed between the parties. Therefore, sale deed Ext.P-1 is a bonafide sale.

9. The sale deed dated 20.8.1993 Ext.R-1 is also of Mauza Palehi. This sale deed was executed after the notification under Section 4 was published for acquiring the land. The State acquired very large area for construction of reservoir of Chamera Project constructed by the Corporation in the area and for this purpose various notifications under Section 4 of the Act were issued from time to time. The possibility cannot be ruled out that because of Section 4 notifications there was fall in market value of land in the area because of fear of land going in the proposed reservoir in the Mohal. In these circumstances, the sale deed dated 20.8.1993 does not reflect the actual market value of the land, rather it appears to be a distress sale keeping in view the acquisition of the land in that area. Moreover, vendor and vendee of this sale deed have not been examined in order to show that in fact this sale transaction was genuine sale transaction. The sale deed dated 20.8.1993, therefore, cannot be relied for assessing the market value of the acquired land.

10. The learned counsel for the Corporation is right that sale deed Ext.P-1 is of small area but the fact cannot be ignored that there is no other genuine transaction prior to notification under Section 4 of the Act in Mauza Palehi which can be relied upon for assessing the market value of the acquired land. The sale deed Ext.R-1 dated 20.8.1993, for the reason stated above, cannot be relied for assessing the market value. In these circumstances, there is no other sale transaction to asses the market value of the acquired land. There is no absolute bar to rely small area transaction for assessing the market value of large area. The small area transaction can be relied for assessing the market value of large area but in that situation appropriate deduction is to be made. In ***Ravinder Narain & Anr. Versus Union of India [2003 (4) SCC 481],*** the Hon'ble Supreme Court in Para-7 has held as follows:

> "It cannot, however, be laid down as an absolute proposition that the rates fixed for the small plots cannot be the basis for fixation of the rate. For example, where there is no other material, it may in appropriate cases be open to the adjudicating court to make comparison of the prices paid for small plots of land. However, in such cases necessary deductions / adjustments have to be made while determining the prices."

11. The learned District Judge, in the impugned award, for assessing the market value of the acquired land has made 65% deduction from the value arrived at on the basis of sale deed Ext.P-1 and has assessed market value of acquired land at the rate of Rs.31,500 per Bigha as against Rs.20,000 per Bigha assessed by Collector.

12. The contention of learned counsel for the claimants / petitioners that after having assessed the market value of the acquired land on the basis of Ext.P-1 the learned District Judge should not have made further deduction of 65% for assessing the market value of the acquired land. This submission has no force.

13. In ***Basavva (SMT) & Ors. Versus Spl. Land Acquisition Officer & Ors. [(1996) 9 SCC 640,*** the Hon'ble Supreme Court has held as follows:-

> "… … In ***Vasundara Devi*** case 63% deduction was upheld. In view of the fact that development of land would have taken years, the High Court has deducted another 12%. Obviously, the High Court kept in view the fact that the lands under Ex. P-10 were situated at far-flung places from the lands under acquisition and since the land takes long time for development it has given additional deduction of 12%, i.e. 53+12%=65% in determination of the compensation. On the basis of the rationale referred to above, the principle adopted by the High Court cannot be said to be illegal."

The learned District Judge has, thus, rightly assessed the market value of the acquired land after making 65% deduction from the market value of the acquired land assessed on the basis of sale deed dated 4.2.1988 dated Ext.P-1.

14. The submission of learned counsel for the petitioners / claimants that learned District Judge should have allowed uniform rate for acquired land has also no force. The Collector has assessed the market value of the acquired land keeping in view the quality of land. The acquired land consists of big area and the acquisition is for reservoir.

The claimants / petitioners have not independently proved that whole of the acquired land was having uniform potential value. Therefore, classification of acquired land for the purposes of compensation by the Collector and the District Judge cannot be faulted.

15. The value of the superstructures was done by the project authorities on the basis of 1987 schedule of rates and no premium was given on 1987 schedule of rates even though the property was acquired vide notification dated 13.6.1992 under Section 4 of the Act. A feeble attempt was made by the learned counsel for the Corporation that claimants / petitioners are not entitled to compensation for the structures built on the acquired land, his submission is that market value of the structures built on acquired land is included in the market value of the land. This argument of the learned counsel has no force. The structures on the acquired land are on very small area. The valuation of the structures has been done separately by the project authorities themselves. There is no absolute bar that no valuation of the structures standing on the acquired land can be done separately, it depends upon the facts of the case, where acquired area is large and structure on such acquired area is on small area then land and structure can be assessed separately. In ***Kirtan Tandon Versus Allahabad Development Authority & Another [(2004) 10 SCC 745],*** the Supreme Court has held as follows:-

> "… …. But there is no hard and fast rule that land and building must be valued as one unit. They can be separately assessed if the large portion of the land is lying vacant and is capable of better use as stated by Venkatachaliah, J. (as His Lordship then was) in

Administrator General of W.B. v. Collector, Varanasi and it will be useful to extract the relevant part of AIR para-8 of the Report: (SCC pp.159-60, para 17)

> 'Usually, land and building thereon constitute one unit. Land is one kind of property; land and building together constitute and altogether different kind of property. They must be valued as one unit. But where, however, the property comprises extensive land and the structures thereon do not indicate a realization of the full developmental potential of the land, it might not be impermissible to value the property estimating separately the market value of the land with reference to the date of the preliminary notification and to add to it the value of the structures as at that time. In this method, building value is estimated on the basis of the prime cost or replacement cost less depreciation. The rate of depreciation is, generally, arrived at by dividing the cost of construction (less the salvage value at the end of the period of utility) by the number of years of utility of the building. The factors that prolong the life and utility of the building, such as good maintenance, necessary influence and bring down the rate of depreciation."

In the present case, structures are on very small area in comparison to whole of the acquired land, therefore, land and structures can be assessed as different units.

16. It is common knowledge that there is general trend of increase in cost of construction. The State has acquired land and structures under

different notifications for construction of reservoir of Chamera Dam. In RFA No.72 of 1998, along with RFAs No.75, 56 and 63 of 1998 decided on 30.5.2007 and RFA No.127 of 1998 decided on 1st June, 2007, this Court has approved 50% increase in market value of the structures over and above the 1987 schedule of rates. The land and structures in those cases were also acquired for construction of reservoir of Chamera Project on the basis of notifications under Section 4 of the Act dated 6.6.1992 and 16.6.1992. In the present case, the notification under Section 4 is of 13.6.1992, therefore, 50% increase given by the District Judge for assessing the market value of the structures over and above the 1987 schedule of rates is just, reasonable and not arbitrary. The claimants / petitioners have not otherwise independently proved that at the time of notification under Section 4 of the Act what was the value of their superstructure standing on the acquired land.

17. The learned counsel for the claimants / petitioners has submitted that PW-7 Milap Chand, Supervisor Horticulture Chamera Project, has deposed that there were 12 fruit trees and 30 forest trees as shown in Ext.PW-7/A to Ext.PW-7/H on the acquired land. He has submitted that learned District Judge has allowed no compensation to the claimants / petitioners for fruit and non fruit trees as well as for crops submerged in the water of the reservoir. He has also urged that nothing has been awarded towards rehabilitation of the claimants / petitioners.

18. The learned counsel for the Corporation has submitted that trees will go with the land inasmuch as trees and land cannot be

assessed for the purposes of market value separately. He has relied ***State of Haryana Versus Gurcharan Singh & Another [1995(1) SCALE 530],*** in para-3 it has been held as follows:-

> "… … It is settled law that the Collector or the Court who determines the compensation for the land as well as fruit bearing trees cannot determine them separately. The compensation is to the value of the acquired land. The market value is determined on the basis of the yield. Then necessarily applying suitable multiplier, the compensation need to be awarded. Under no circumstances the court should allow the compensation on the basis of the nature of the land as well as fruit bearing trees. In other words, market value of the land is determined twice over and one on the basis of the value of the land and again on the basis of the yield got from the fruit bearing trees… …."

19. In ***Airports Authority of India Versus Satyagopal Roy & Others [(2002) 3 SCC 527]*** in Para 8 the Supreme Court has held as follows:-

> "It is settled law that in evaluating the market value of the acquired property, namely, land and building or the land with fruit bearing trees standing thereon, value of both is to be determined not as separate units but as one unit. Therefore, it would be open to the Land Acquisition Officer or the Court, either to assess the land with all its advantages and fix the market value thereof on the basis of comparable sale instances … ……."

It is, thus, clear that compensation towards trees cannot be assessed separately. The manner in which market value of the land has been assessed in the present case includes the value of trees, therefore, trees cannot be assessed separately. The perusal of the impugned award would show that claimants / petitioners did not put forward their case before the learned District Judge for awarding compensation to them for fruit trees, non fruit trees, damage to crops as well as for their rehabilitation. Once they have not put forward their claim under such heads before the learned District Judge then they cannot put such claim before this Court. In the cross objections filed by claimants / petitioners in the appeal, there is no averment that in fact claim was pressed before the learned District Judge for compensation for fruit trees, non fruit trees, damage to crops and rehabilitation of the claimants / petitioners and despite that learned District Judge did not consider such claims. In ***Dr.Mahesh Chand Sharma Versus Smt.Raj Kumari Sharma & Others [AIR 1996 SC 869],*** it has been held that a party who abandons a particular plea at a particular stage cannot be allowed to re-agitate in the appeal. Therefore, on this additional ground also, the claimants / petitioners are not entitled to compensation for fruit trees, non fruit trees, submerged crops and their rehabilitation.

20. The learned District Judge has rightly assessed the market value of the acquired land and superstructures on the basis of material on record. The Corporation and the claimants / petitioners have failed to make out any case for taking contrary view.

21. No other point was urged.

22. The result of the above discussion is that the appeal and cross objections deserve to be dismissed and are accordingly dismissed. No cost.

5th July, 2007 ***(Kuldip Singh), J.***
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